CASE CONCERNING MARITIME DELIMITATION AND TERRITORIAL QUESTIONS BETWEEN QATAR AND BAHRAIN (QATAR *v.* BAHRAIN) (JURISDICTION AND ADMISSIBILITY)

Judgment of 15 February 1995

The Court delivered its Judgment on jurisdiction and admissibility in the case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain.

The Court was composed as follows: President Bedjaoui; Vice-President Schwebel; Judges Oda, Sir Robert Jennings, Guillaume, Shahabuddeen, Aguilar Mawdsley, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma; Judges *ad hoc* Valticos, Torres Bernárdez; Registrar Valencia-Ospina.

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The operative paragraph of the Judgment reads as follows:

"50. For these reasons,

THE COURT,

(1) By 10 votes to 5,

Finds that it has jurisdiction to adjudicate upon the dispute submitted to it between the State of Qatar and the State of Bahrain;

. . .

(2) By 10 votes to 5,

Finds that the Application of the State of Qatar as formulated on 30 November 1994 is admissible.

. . . "

Those who voted IN FAVOUR: President Bedjaoui; Judges Sir Robert Jennings, Guillaume, Aguilar Mawdsley, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer; Judge *ad hoc* Torres Bernárdez;

AGAINST: Vice-President Schwebel; Judges Oda, Shahabuddeen, Koroma; Judge *ad hoc* Valticos.

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Vice-President Schwebel, Judges Oda, Shahabuddeen and Koroma, and Judge *ad hoc* Valticos appended dissenting opinions to the Judgment of the Court.

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History of the case and submissions
(paras. 1-15)

In its Judgment, the Court recalls that on 8 July 1991 Qatar filed an Application instituting proceedings against Bahrain in respect of certain disputes between the two States relating to sovereignty over the Hawar islands, sovereign rights over the shoals of Dibal and Qit'at Jaradah, and the delimitation of the maritime areas of the two States.

The Court then recites the history of the case. It recalls that in its Application Qatar founded the jurisdiction of the Court upon two agreements between the Parties stated to have been concluded in December 1987 and December 1990, respectively, the subject and scope of the commitment to jurisdiction being determined by a formula proposed by Bahrain to Qatar on 26 October 1988 and accepted by Qatar in December 1990 (the "Bahraini formula"). Bahrain contested the basis of jurisdiction invoked by Qatar.

By its Judgment of 1 July 1994, the Court found that the exchanges of letters between the King of Saudi Arabia and the Amir of Qatar dated 19 and 21 December 1987, and between the King of Saudi Arabia and the Amir of Bahrain dated 19 and 26 December 1987, and the document headed "Minutes" and signed at Doha on 25 December 1990 by the Ministers for Foreign Affairs of Bahrain, Qatar and Saudi Arabia, were international agreements creating rights and obligations for the Parties; and that, by the terms of those agreements, the Parties had undertaken to submit to the Court the whole of the dispute between them, as circumscribed by the Bahraini formula. Having noted that it had before it only an Application from Qatar setting out that State's specific claims in connection with that formula, the Court decided to afford the Parties the opportunity to submit to it the whole of the dispute. It fixed 30 November 1994 as the time-limit within which the Parties were jointly or separately to take action to that end; and reserved any other matters for subsequent decision.

On 30 November 1994, the Agent of Qatar filed in the Registry a document entitled "Act to comply with paragraphs (3) and (4) of operative paragraph 41 of the Judgment of the Court dated 1 July 1994". In the document, the Agent referred to "the absence of an agreement between the Parties to act jointly" and declared that he was thereby submitting to the Court "the whole of the dispute between Qatar and Bahrain, as circumscribed by the text . . . referred to in the 1990 Doha Minutes as the 'Bahraini formula' ".

He enumerated the subjects which, in Qatar's view, fell within the Court's jurisdiction:

"1. The Hawar Islands, including the island of Janan;
2. Fasht al Dibal and Qit'at Jaradah;
3. The archipelagic baselines;

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4. Zubarah;

5. The areas for fishing for pearls and for fishing for swimming fish and any other matters connected with maritime boundaries.

It is understood by Qatar that Bahrain defines its claim concerning Zubarah as a claim of sovereignty.

Further to its Application Qatar requests the Court to adjudge and declare that Bahrain has no sovereignty or other territorial right over the island of Janan or over Zubarah, and that any claim by Bahrain concerning archipelagic baselines and areas for fishing for pearls and swimming fish would be irrelevant for the purpose of maritime delimitation in the present case."

On 30 November 1994, the Registry also received from the Agent of Bahrain a document entitled "Report of the State of Bahrain to the International Court of Justice on the attempt by the Parties to implement the Court's Judgment of 1st July, 1994". In that "Report", the Agent stated that his Government had welcomed the Judgment of 1 July 1994 and understood it as confirming that the submission to the Court of "the whole of the dispute" must be "consensual in character, that is, a matter of agreement between the Parties". Yet, he observed, Qatar's proposals had "taken the form of documents that can only be read as designed to fall within the framework of the maintenance of the case commenced by Qatar's Application of 8th July, 1991"; and, further, Qatar had denied Bahrain "the right to describe, define or identify, in words of its own choosing, the matters which it wishes specifically to place in issue", and had opposed "Bahrain's right to include in the list of matters in dispute the item of 'sovereignty over Zubarah' ".

Bahrain submitted observations on Qatar's Act to the Court on 5 December 1994. It said that

"the Court did not declare in its Judgment of 1st July, 1994 that it had jurisdiction in the case brought before it by virtue of Qatar's unilateral Application of 1991. Consequently, if the Court did not have jurisdiction at that time, then the Qatari separate Act of 30th November, even when considered in the light of the Judgment, cannot create that jurisdiction or effect a valid submission in the absence of Bahrain's consent".

A copy of each of the documents produced by Qatar and Bahrain was duly transmitted to the other Party.

Jurisdiction of the Court
(paras. 16-44)

The Court begins by referring to the negotiations held between the Parties following the Court's Judgment of 1 July 1994, to the "Act" addressed by Qatar to the Court on 30 November 1994, and to the comments made thereon by Bahrain on 5 December 1994.

The Court then recalls that, in its Judgment of 1 July 1994, it reserved for subsequent decision all such matters as had not been decided in that Judgment. Accordingly, it must rule on the objections of Bahrain in its decision on its jurisdiction to adjudicate upon the dispute submitted to it and on the admissibility of the Application.

Interpretation of paragraph 1 of the Doha Minutes
(paras. 25-29)

Paragraph 1 of the Doha Minutes places on record the agreement of the Parties to "*reaffirm what was agreed previously between [them]*".

The Court proceeds, first of all, to define the precise scope of the commitments which the Parties entered into in 1987 and agreed to reaffirm in the Doha Minutes of 1990. In this regard, the essential texts concerning the jurisdiction of the Court are points 1 and 3 of the letters of 19 December 1987. By accepting those points, Qatar and Bahrain agreed, on the one hand, that

"All the disputed matters shall be referred to the International Court of Justice, at The Hague, for a final ruling binding upon both parties, who shall have to execute its terms"

and, on the other, that a Tripartite Committee be formed

"for the purpose of approaching the International Court of Justice, and satisfying the necessary requirements to have the dispute submitted to the Court in accordance with its regulations and instructions so that a final ruling, binding upon both parties, be issued".

Qatar maintains that, by that undertaking, the Parties clearly and unconditionally conferred upon the Court jurisdiction to deal with the disputed matters between them. The work of the Tripartite Committee was directed solely to considering the procedures to be followed to implement the commitment thus made to seise the Court. Bahrain, on the contrary, maintains that the texts in question expressed only the Parties' consent in principle to a seisin of the Court, but that such consent was clearly subject to the conclusion of a Special Agreement marking the end of the work of the Tripartite Committee.

The Court cannot agree with Bahrain in this respect. Neither in point 1 nor in point 3 of the letters of 19 December 1987 can it find the condition alleged by Bahrain to exist. It is indeed apparent from point 3 that the Parties did not envisage seising the Court without prior discussion, in the Tripartite Committee, of the formalities required to do so. But the two States had none the less agreed to submit to the Court all the disputed matters between them, and the Committee's only function was to ensure that this commitment was given effect, by assisting the Parties to approach the Court and to seise it in the manner laid down by its Rules. By the terms of point 3, neither of the particular modalities of seisin contemplated by the Rules of Court was either favoured or rejected.

The Tripartite Committee met for the last time in December 1988, without the Parties having reached agreement either as to the "disputed matters" or as to the "necessary requirements to have the dispute submitted to the Court". It ceased its activities at the instance of Saudi Arabia and without opposition from the Parties. As the Parties did not, at the time of signing the Doha Minutes in December 1990, ask to have the Committee re-established, the Court considers that paragraph 1 of those Minutes could only be understood as contemplating the acceptance by the Parties of point 1 in the letters from the King of Saudi Arabia dated 19 December 1987 (the commitment to submit to the Court "all the disputed matters" and to comply with the judgment to be handed down by the Court), to the exclusion of point 3 in those same letters.

Interpretation of paragraph 2 of the Doha Minutes
(paras. 30-42)

The Doha Minutes not only confirmed the agreement reached by the Parties to submit their dispute to the Court, but also represented a decisive step along the way towards a peaceful solution of that dispute, by settling the contro-

versial question of the definition of the "disputed matters". This is one of the principal objects of paragraph 2 of the Minutes which, in the translation that the Court will use for the purposes of the present Judgment, reads as follows:

> "(2) The good offices of the Custodian of the Two Holy Mosques, King Fahd Ben Abdul Aziz, shall continue between the two countries until the month of Shawwal 1411 A.H., corresponding to May 1991. Once that period has elapsed, the two parties may submit the matter to the International Court of Justice in accordance with the Bahraini formula, which has been accepted by Qatar, and with the procedures consequent on it. The good offices of the Kingdom of Saudi Arabia will continue during the period when the matter is under arbitration."

Paragraph 2 of the Minutes, which formally placed on record Qatar's acceptance of the Bahraini formula, put an end to the persistent disagreement of the Parties as to the subject of the dispute to be submitted to the Court. The agreement to adopt the Bahraini formula showed that the Parties were at one on the extent of the Court's jurisdiction. The formula had thus achieved its purpose: it set, in general but clear terms, the limits of the dispute the Court would henceforth have to entertain.

The Parties none the less continue to differ on the question of the method of seisin. For Qatar, paragraph 2 of the Minutes authorized a unilateral seisin of the Court by means of an application filed by one or the other Party, whereas for Bahrain, on the contrary, that text only authorized a joint seisin of the Court by means of a special agreement.

The Parties have devoted considerable attention to the meaning which, according to them, should be given to the expression "*al-tarafan*" [Qatar: "the parties"; Bahrain: "the two parties"] as used in the second sentence of the original Arabic text of paragraph 2 of the Doha Minutes. The Court observes that the dual form in Arabic serves simply to express the existence of two units (the parties or the two parties), so what has to be determined is whether the words, when used here in the dual form, have an *alternative* or a *cumulative* meaning: in the first case, the text would leave each of the Parties with the option of acting unilaterally, and, in the second, it would imply that the question be submitted to the Court by both Parties acting in concert, either jointly or separately.

The Court first analyses the meaning and scope of the phrase "Once that period has elapsed, the two parties may submit the matter to the International Court of Justice". It notes that the use in that phrase of the verb "may" suggests in the first place, and in its most material sense, the option or right for the Parties to seise the Court. In fact, the Court has difficulty in seeing why the 1990 Minutes, the object and purpose of which were to advance the settlement of the dispute by giving effect to the formal commitment of the Parties to refer it to the Court, would have been confined to opening up for them a possibility of joint action which not only had always existed but, moreover, had proved to be ineffective. On the contrary, the text assumes its full meaning if it is taken to be aimed, for the purpose of accelerating the dispute settlement process, at opening the way to a possible unilateral seisin of the Court in the event that the mediation of Saudi Arabia had failed to yield a positive result by May 1991. The Court also looks into the possible implications, with respect to that latter interpretation, of the conditions in which the Saudi mediation was to go forward, according to the first and third sentences of paragraph 2 of the Minutes. The Court further notes that the second sentence can be read as affecting the continuation of the mediation. On that hypothesis, the process of mediation would have been suspended in May 1991 and could not have resumed prior to the seisin of the Court. For the Court, it could not have been the purpose of the Minutes to delay the resolution of the dispute or to make it more difficult. From that standpoint, the right of unilateral seisin was the necessary complement to the suspension of mediation.

The Court then applies itself to an analysis of the meaning and scope of the terms "in accordance with the Bahraini formula, which has been accepted by Qatar, and with the procedures consequent on it", which conclude the second sentence of paragraph 2 of the Doha Minutes. The Court must ascertain whether, as is maintained by Bahrain, that reference to the Bahraini formula, and, in particular, to the "procedures consequent on it", had the aim and effect of ruling out any unilateral seisin. The Court is aware that the Bahraini formula was originally intended to be incorporated into the text of a special agreement. However, it considers that the reference to that formula in the Doha Minutes must be evaluated in the context of those Minutes rather than in the light of the circumstances in which that formula was originally conceived. If the 1990 Minutes referred back to the Bahraini formula, it was in order to determine the subject-matter of the dispute which the Court would have to entertain. But the formula was no longer an element in a special agreement, which, moreover, never saw the light of day; it henceforth became part of a binding international agreement which itself determined the conditions for seisin of the Court. The Court notes that the very essence of that formula was, as Bahrain clearly stated to the Tripartite Committee, to circumscribe the dispute with which the Court would have to deal, while leaving it to each of the Parties to present its own claims within the framework thus fixed. Given the failure to negotiate a special agreement, the Court takes the view that the only procedural implication of the Bahraini formula on which the Parties could have reached agreement in Doha was the possibility that each of them might submit distinct claims to the Court.

Consequently, it seems to the Court that the text of paragraph 2 of the Doha Minutes, interpreted in accordance with the ordinary meaning to be given to its terms in their context and in the light of the object and purpose of the said Minutes, allowed the unilateral seisin of the Court.

In these circumstances, the Court does not consider it necessary to resort to supplementary means of interpretation in order to determine the meaning of the Doha Minutes but has recourse to them in order to seek a possible confirmation of its interpretation of the text. Neither the *travaux préparatoires* of the Minutes, however, nor the circumstances in which the Minutes were signed, can, in the Court's view, provide it with conclusive supplementary elements for that interpretation.

Links between jurisdiction and seisin
(para. 43)

The Court still has to examine one other argument. According to Bahrain, even if the Doha Minutes were to be interpreted as not ruling out unilateral seisin, that would still not authorize one of the Parties to seise the Court by way of an Application. Bahrain argues, in effect, that seisin is not merely a procedural matter but a question of juris-

diction; that consent to unilateral seisin is subject to the same conditions as consent to judicial settlement and must therefore be unequivocal and indisputable; and that, where the texts are silent, joint seisin must by default be the only solution.

The Court considers that, as an act instituting proceedings, seisin is a procedural step independent of the basis of jurisdiction invoked. However, the Court is unable to entertain a case so long as the relevant basis of jurisdiction has not been supplemented by the necessary act of seisin: from this point of view, the question of whether the Court was validly seised appears to be a question of jurisdiction. There is no doubt that the Court's jurisdiction can only be established on the basis of the will of the Parties, as evidenced by the relevant texts. But in interpreting the text of the Doha Minutes, the Court has reached the conclusion that it allows a unilateral seisin. Once the Court has been validly seised, both Parties are bound by the procedural consequences which the Statute and the Rules make applicable to the method of seisin employed.

In its Judgment of 1 July 1994, the Court found that the exchanges of letters of December 1987 and the Minutes of December 1990 were international agreements creating rights and obligations for the Parties, and that by the terms of those agreements the Parties had undertaken to submit to it the whole of the dispute between them. In the present Judgment, the Court has noted that, at Doha, the Parties had reaffirmed their consent to its jurisdiction and determined the subject-matter of the dispute in accordance with the Bahraini formula; it has further noted that the Doha Minutes allowed unilateral seisin. The Court considers, consequently, that it has jurisdiction to adjudicate upon the dispute.

Admissibility
(paras. 45-48)

Having thus established its jurisdiction, the Court still has to deal with certain problems of admissibility, as Bahrain has reproached Qatar with having limited the scope of the dispute to only those questions set out in Qatar's Application.

In its Judgment of 1 July 1994, the Court decided:

"to afford the Parties the opportunity to ensure the submission to the Court of the entire dispute as it is comprehended within the 1990 Minutes and the Bahraini formula, to which they have both agreed".

Qatar, by a separate act of 30 November 1994, submitted to the Court "the whole of the dispute between Qatar and Bahrain, as circumscribed" by the Bahraini formula (see above). The terms used by Qatar are similar to those used by Bahrain in several draft texts, except in so far as these related to *sovereignty* over the Hawar islands and *sovereignty* over Zubarah. It appears to the Court that the form of words used by Qatar accurately described the subject of the dispute. In the circumstances, the Court, while regretting that no agreement could be reached between the Parties as to how it should be presented, concludes that it is now seised of the whole of the dispute, and that the Application of Qatar is admissible.

Dissenting opinion of Vice-President Schwebel

Vice-President Schwebel dissented from the Court's Judgment. Since the terms of the treaty at issue—the Doha Minutes—were "quintessentially unclear", the Court was bound to weigh the preparatory work of its text, which in fact had been the principal focus of the argument of the Parties. That preparatory work showed that, as the price of signature of the Doha Minutes, Bahrain had required that the draft text as proposed at Doha be altered to exclude application to the Court by "either party", in favour of the agreed text authorizing application by "the two parties". In proposing and achieving this alteration, Bahrain could only have intended to debar application by "either party" and hence to require application by both parties.

The Court, despite the compelling character of the preparatory work, gave it inconclusive weight. In effect it set aside the preparatory work either because it vitiated rather than confirmed the Court's interpretation, or because its construction of the treaty's text was in the Court's view so clear that reliance upon the preparatory work was unnecessary.

In Judge Schwebel's view, the Court's construction of the Doha Minutes for such reasons was at odds with the rules of interpretation prescribed by the Vienna Convention on the Law of Treaties. It did not comport with a good-faith interpretation of the treaty's terms "in the light of its object and purpose" because the object and purpose of both Parties to the treaty was not to authorize unilateral recourse to the Court. It did not implement the Convention's provision for recourse to the preparatory work because, far from confirming the meaning arrived at by the Court's interpretation, the preparatory work vitiated it. Moreover, the Court's failure to determine the meaning of the treaty in the light of its preparatory work resulted, if not in an unreasonable interpretation of the treaty itself, in an interpretation of the preparatory work which was "manifestly . . . unreasonable".

These considerations have special force where the treaty at issue is one that is construed to confer jurisdiction on the Court. Where the preparatory work of a treaty demonstrates—as in this case—the lack of a common intention of the parties to confer jurisdiction on the Court, the Court is not entitled to base its jurisdiction on that treaty.

Dissenting opinion of Judge Oda

It is Judge Oda's view that the Parties in the case had, by 30 November 1994, failed to take any action, either jointly or separately, in response to the Court's Judgment of 1 July 1994 (which, in any case, in Judge Oda's opinion was not so much a "Judgment" as a record of the Court's attempted conciliation).

On 30 November 1994, the Registry received an "Act" by Qatar and a "Report" by Bahrain. The "Report" of Bahrain was not intended to have any legal effect. The "Act" by Qatar was, in Judge Oda's opinion, intended to modify or add to the original submissions presented in the Application of Qatar.

In the event of any modification of or addition to its submissions by Qatar, the Court should have formally notified Bahrain of that modification or addition and should have given Bahrain an opportunity to express its views within a certain time. The Court did not take any such action.

What did happen was that the Court received Bahrain's "Comments" on the "Act" of Qatar which were sent to the Registry on Bahrain's own initiative on 5 December 1994, only a few days after it had received a copy of the "Act" of Qatar from the Registry. As no further oral proceedings were ordered by the Court, Bahrain was not given

the opportunity to express its formal position on those modifications of or additions to the submissions by Qatar. The procedure taken by the Court appears to Judge Oda to have been very unfortunate, as the Court proceeded instead to draft the present Judgment.

The Court seems to Judge Oda to be saying that the "1987 documents" and the "1990 Doha Minutes" together constitute an international agreement containing a compromissory clause as contemplated by Article 36, paragraph 1, of the Statute. The Court appears further to consider that by its amended submissions as of 30 November 1994 Qatar has submitted "the whole of the dispute" to the Court, so that the Application of Qatar now falls within the ambit of the "1990 Agreement".

For the reasons already set out in his dissenting opinion to the July 1994 Judgment and partly repeated here, Judge Oda is of the view that neither the 1987 exchanges of letters nor the 1990 Doha Minutes fall within the category of "treaties and conventions in force" which specially provide for certain matters to be referred to the Court for a decision by means of a unilateral application under Article 36, paragraph 1, of the Statute.

After examining the negotiations which had been going on between the Parties, Judge Oda concludes that if any mutual understanding was reached between Qatar and Bahrain in December 1987, it was simply an agreement to form a Tripartite Committee, which was to facilitate the drafting of a *special agreement*. He further concludes that the Tripartite Committee was unable to produce an agreed draft of a special agreement; and that the Parties in signing the Minutes of the Doha meeting agreed that reference to the International Court of Justice was to be an alternative to Saudi Arabia's good offices, which did not, however, imply any authorization such as to permit one Party to make an approach to the Court by unilateral application.

Judge Oda is further of the view that, even if the "1990 Agreement" can constitute a basis on which the Court may be seised of the dispute, there seems to be nothing in the present Judgment to show that the amended or additional submissions of Qatar filed on 30 November 1994 in fact comprise "the whole of the dispute", as compared to the opposite position which seems to have been taken by Bahrain. He is therefore unable to vote in favour of the present Judgment.

Dissenting opinion of Judge Shahabuddeen

In his dissenting opinion, Judge Shahabuddeen agreed that the Parties had conferred jurisdiction on the Court to adjudicate on the whole of the dispute. In his view, however, the whole of the dispute was not before the Court, for the reason that Bahrain's claim to sovereignty over Zubarah had not been submitted to the Court by or with the authority of Bahrain; further, if that claim was before the Court, the manner in which it was presented did not enable the Court to deal with it judicially. In addition, he considered that the Parties had not agreed to a right of unilateral application. He concluded that the case was not within the Court's jurisdiction; alternatively, that it was inadmissible.

Dissenting opinion of Judge Koroma

In his dissenting opinion, Judge Koroma observed that it is well established in international law and has been fundamental to the jurisprudence of the Court that the jurisdiction of the Court exists only in so far as the parties to a dispute have accepted it and, more particularly, is contingent on the consent of the Respondent State. Such consent, he further observed, must be clear and indubitable.

In the present case, the Respondent State, Bahrain, had consistently maintained that its consent to the jurisdiction, if at all granted, was conditional upon reaching a special agreement with Qatar, to submit all their disputed matters to the Court, and seise the Court jointly or together.

The Court, in its Judgment of 1 July 1994, held that the relevant documents on which the Applicant relied to found its jurisdiction constituted international agreements, creating rights and obligations for the Parties. The Court was, however, unable to find that it had jurisdiction to hear the dispute, but instead found that the terms of those agreements to submit the whole of the dispute had not been met. It therefore decided to afford the Parties the opportunity to submit the whole of the dispute, jointly or separately.

In his view, the 1 July 1994 Judgment was a finding in favour of the contention that the consent to confer jurisdiction on the Court was subject to the conclusion of a special agreement, defining the subject-matter of the dispute. The Parties were unable to reach agreement to seise the Court of the "whole of the dispute" within the time-limit prescribed by the Court. It, therefore, follows that the Court is not in a position to assume jurisdiction in the matter.

Moreover, one of the legal instruments on which the Court based itself to found jurisdiction had, at the insistence of Bahrain, employed the Arabic expression "*al-tarafan*", translated to mean "the two parties" or "the parties", instead of "each of the two parties" as had been proposed, as a means of seising the Court. The Court instead was seised unilaterally. This issue was of crucial importance to the finding of jurisdiction and was at best ambiguous. The Court should have declined to assume jurisdiction on this ground of ambiguity.

It is well understood that the powers of the Court to assume jurisdiction are limited by the terms of the agreement between the parties under which a dispute is submitted to it. The Agreements in issue contemplated a special agreement and joint seisin by the Parties. Those conditions were not met and the Court, therefore, lacked the power to decide the case and should have declared it inadmissible.

Dissenting opinion of Judge Valticos

Judge Valticos considers that the Court is not competent to consider the dispute, among other things because, by its preceding Judgment of 1 July 1994, the Court had asked *both States* to submit to it the *whole of the dispute*, whereas only one of them (Qatar) did so. Among the contentious issues thus mentioned by Qatar is the question of "*Zubarah*", which Bahrain rejected because the latter State had asked for the term "sovereignty" to be included in the wording of the question. Although the Court considers that the mention of Zubarah makes it possible to raise the question of sovereignty over that territory, this is questionable since in reality Qatar proposed that it should simply be noted that Bahrain defines its claim concerning Zubarah as a claim of sovereignty, which might enable it to dispute the competence of the Court on this topic. Hence, there is no full agreement of the two States regarding the subject-matter of the dispute.

Furthermore, the Court had indicated that, in submitting to it the whole of the dispute, the Parties were to react

jointly or separately. This raises the question of the Arabic term *al-tarafan*, used in the Doha Minutes, which had raised the problem of whether this term referred to both Parties taken together or separately. In the conditions in which this text was adopted—following an amendment proposed by Bahrain—this term should have been understood to mean "both Parties at once".

As regards the Judgment of 1 July 1994, the above wording manifestly referred, in either case, to an act by the two Parties, whether effected jointly or separately. Moreover, this was a logical consequence of the principle according to which the Court can only be seised by the two Parties to a dispute, unless there is an agreement to the contrary, which was not the case here. Furthermore, the two Parties endeavoured, unsuccessfully, to negotiate a special agreement. Also, the reference to the Bahraini formula presupposes a combined operation.

There was thus neither full agreement of the Parties on the subject-matter of the dispute, nor an act by which the two Parties submitted the whole of the dispute to the Court.

In the Judgment of 1 July 1994, the Court did not rule on its jurisdiction, wishing "to afford the Parties the opportunity to submit (to it) the whole of the dispute between them". Only one of the two States responded to this request; the other, disagreeing with the form of words of its opponent, was opposed to the case being brought before the Court.

The Court should therefore have concluded that it had no jurisdiction to entertain the question.

The Court may thus perhaps have provided an opportunity for the prevention of a conflict, at the same time formulating a thesis intended to satisfy both Parties, since it accepts that its jurisdiction covers sovereignty over Zubarah. However, the Judgment suffers from the legal weakness constituted by the absence of actual consent by one of the Parties and the inadequacy of the seisin.

The Court thus showed itself to be insufficiently exacting as regards the consensual principle which lies at the root of its jurisdiction and the trust placed in it by the international community.